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No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

TIDELAND ELECTRIC MEMBERSHIP CORPORATION,
Petitioner

v.

CHARLES HASSINGER, Administrator of the Estate of STANLEY H. HASSINGER, III, JANET MEAD PROCTOR, Administratrix of the Estate of ROBERT DIEGO PROCTOR, JAMES B. POWELL, Administrator of the Estate of STUART L. POWELL, COAST CATAMARAN CORPORATION and THE COLEMAN COMPANY, INC.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

DOES A TORT OCCURRING SEAWARD OF THE MEAN HIGH WATER LINE BUT NOT NECESSARILY UPON WATER MEET THE SITUS REQUIREMENT OF *EXECUTIVE JET*?

DOES THE ACT OF CARRYING A LIGHTWEIGHT SAILBOAT ASHORE CONSTITUTE NAVIGATION, THEREBY RENDERING ANY IMPEDIMENT TO SUCH ACT AN "OBSTRUCTION TO NAVIGATION" AND HENCE A MATTER OF TRADITIONAL ADMIRALTY CONCERN?

PARTIES TO THE PROCEEDING

The caption lists all parties to the proceeding. Coast Catamaran Corporation, named as a Respondent herein, is a Co-Defendant in all three cases. Coast Catamaran Corporation has previously filed with this Court a Petition for Certiorari to review the judgment of the Circuit Court (No. 85-1659). The Petitioner, Tideland Electric Membership Corporation, has no corporate parents, subsidiaries, or affiliates.

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NOTE: Tideland Electric Membership Corporation adopts by reference the entirety of the Appendix previously filed by Coast Catamaran Corporation, attached to its Petition for Certiorari, which appears of record in Case No. 85-1659. As the Appendix filed by Coast Catamaran Corporation includes all documents necessary to this Petition, a duplicative Appendix does not appear herein.

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OPINIONS IN COURTS BELOW

The District Court, by Memorandum of Decision dated April 18, 1985 and Order dated May 9, 1985 found that it was empowered to determine the controversy as to this Petitioner by reason of admiralty jurisdiction. The Circuit Court allowed an interlocutory appeal on this jurisditcional question, affirmed the District Court's decision and denied Co-Defendant Coast Catamaran Corporation's Petition for Rehearing and Suggestion for Rehearing in banc by Order dated February 6, 1986.

GROUNDS OF JURISDICTION

Jurisdiction to this Court is invoked pursuant to 28 U.S.C.A. Section 1254(1) (1968) to review an opinion of the U.S. Court of Appeals for the Fourth Circuit dated January 8, 1986 (22-A) and the Order of that court dated February 6, 1986 (35-A) denying Coast Catamaran Corporation's Petition for Rehearing and Suggestion for Rehearing in banc.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

U.S. Const., art. III, Sec. 2, cl. 1.

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases effecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between the Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

28 U.S.C. § 1333 Admiralty, Maritime and Prize Cases.

> "The District Courts shall have original jurisdiction, exclusive of the Courts of the States, of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.
>
> (2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize."

STATEMENT OF THE CASE

These tort cases arose from the electrocution of three North Carolina residents which occurred when the aluminum mast of the sailboat they were carrying ashore contacted a power line owned and operated by Tideland Electric Membership Corporation, (Petitioner), a North Carolina corporation providing electric service to portions of five counties in eastern North Carolina.

Respondents brought suit against Petitioner and the sailboat manufacturer in the United States District Court for the Eastern District of North Carolina, invoking Admiralty jurisdiction and Federal Question jurisdiction as to Petitioner. Petitioner filed a timely Motion to Dismiss for lack of subject matter jurisdiction. By Memorandum of Decision dated April 18, 1985, the trial court dismissed the Respondents' Federal Question claims, but found that admiralty jurisdiction was present. This jurisdictional ruling is at issue in this Petition for writ of certiorari.

The power line in question ran parallel and adjacent to North Carolina Highway 12 in the village of Ocracoke on the Outer Banks of North Carolina. Highway 12, at the site of the accident, lies in close proximity to the waters of Silver Lake. Silver Lake is a tidal body of water. The status of the tide at the time of the accident is a matter of some dispute. The location of the sailboat and the decedents with respect to the water's edge at the time of the accident is also disputed. While it is undisputed that at the moment the mast contacted the power line the decedents were *carrying* or *pulling* the boat, rather than sailing it, the evidence is inconclusive as to whether the decedents or any portion of the boat were in the water at that time.

IMPORTANT REASON FOR ALLOWANCE OF WRIT

I. This Is The First Circuit Court Decision To Hold That, In Order For Federal Admiralty Jurisdiction To Exist, The Situs Requirement Of *Executive Jet* Does Not Require A Tort To Occur On Water, But Only That The Tort Occur Below The Mean High Water Line.

This Court, in *Executive Jet Aviation, Inc. v. City of Cleveland, Ohio*, 409 U.S. 249, 93 S. Ct. 493 (1972), summarized the *situs* requirement for admiralty tort jurisdiction as follows: "if the wrong occurred *on* navigable waters, the action is within admiralty jurisdiction; if the wrong occurred *on land*, it is not." *Id.* at 253, 93 S. Ct. at 497 (emphasis added). The District Court was unable to make the single critical finding required by *Executive Jet*, that the tort occurred *on* the water. Rather, the District Court sidestepped this requirement by declaring that admiralty tort jurisdiction extended at all times to the mean high water mark, regardless of the state of the tide. In affirming the District Court's decision, the Circuit Court determined that the term "navigable waters" includes "all areas within the 'ebb and flow of the tide,'" and therefore, federal admiralty jurisdiction would attach to a tort occurring below the mean high water mark, even if the tide was out at the time of the incident.

In its analysis of prior law, however, the Circuit Court indiscriminately relied upon non-tort cases for the proposition that admiralty tort jurisdiction extends at all times to the mean high water line, wherever that is. The principal case relied upon by the Circuit Court is *The Steamship Jefferson*, 215 U.S. 130 (1909), which involved a claim for *salvage* by the libellant, who had extinguished a fire on the vessel in question while it lay in dry dock. Because a claim for salvage is a creation of admiralty law designed to encourage the rescue of ships and their cargo, it is understandable that this Court chose to extend the incentive provided by the sal-

vage doctrine to rescue of a ship in dry dock, where such claims previously had been available only to those who rescued ships on water. This is similar to the situation found in suits upon maritime contracts, which may be brought in admiralty regardless of the situs of the contract, because of the importance of such contracts to maritime commerce. *The Steamship Jefferson*, because it involves a *salvage* claim, is not helpful in determining the question of jurisdiction with respect to *torts*.

The Circuit Court also relied upon *United States v. Stoeco Homes, Inc.*, 498 F.2d 597 (3rd Cir. 1974), *cert. denied*, 420 U.S. 927 (1975) in finding that admiralty tort jurisdiction extended at all times to the mean high water mark. *Stoeco Homes*, however, like *The Steamship Jefferson*, had nothing to do with a maritime tort action. Rather, *Stoeco Homes* involved the interpretation and application of a portion of the Rivers and Harbors Appropriation Act of 1899, as applied to a defendant who was attempting to develop an area which had been a tidal marsh. Thus, it is unpersuasive authority for holding that admiralty tort jurisdiction extends to the mean high water line. In its opinion, the Circuit Court cited other appellate decisions which also referred to the mean high water line, but none of those decisions involved a question of admiralty jurisdiction with respect to tort actions, as here.

At least one other court has searched for some authority on this particular issue, but found none. *See, Boudlouche v. Conoco Oil Corp.*, 615 F.2d 687, 688 (5th Cir. 1980) ("we have found no cases where maritime jurisdiction has been extended to an injury that occurred entirely on land as a result of a vessel which was ashore"). Thus, the Circuit Court's decision here upholding admiralty jurisdiction is an unprecedented and unwarranted extension of federal jurisdiction over ordinary tort claims which are as readily determinable in the state courts as the federal courts.

The decision also complicates what had heretofore been a rule easy of application: if the tort occurred upon the water, admiralty jurisdiction applied; if the tort occurred upon the land, jurisdiction was vested in the state courts. The water's edge constantly provided a clear demarcation of the limit of admiralty tort jurisdiction. The mean high water line, on the other hand, is not an easily ascertainable boundary. It is an imaginary line which requires specialized training to properly locate. In many places in the United States, this imaginary line cannot be or has not been located. The Circuit Court's extension of admiralty tort jurisdiction to the intertidal area, regardless of the actual location of the tide, is thus unsupported by practical considerations as well as prior case law.

II. The Circuit Court Has Redefined "Navigation", Which Is Such An Important Concept In Admiralty Law That Its Meaning Should Be Settled By This Court.

The Circuit Court affirmed the District Court's decision that the act of beaching a sailboat constitutes "navigation" until the vessel is removed from the reach of the tides. Neither the District Court nor the Fourth Circuit has cited any authority whatsoever for this view. Navigation in the traditional sense, of course, involves the piloting of vessels *upon the water*. *See, Black's Law Dictionary* at 926 (5th Ed. 1979). In this sense, navigation is a concept with which admiralty law is intimately concerned. Accordingly, admiralty law recognizes certain rules of navigation, fixes liability upon parties who violate them, and also has the power to fix liability upon persons obstructing such navigation. The Circuit Court, by holding that the act of pulling a sailboat across a beach constitutes navigation, has created an entirely new dimension to the sphere of traditional admiralty concerns. This holding is particularly significant in an age of ever-

changing technology which has already begun to blur the distinctions between watercraft and land vehicles. Because the term "navigation" invokes many different aspects of the law of admiralty, including jurisdiction, this Court should determine whether the acts of the decedents at the time of their deaths should be defined as "navigation." If this Court should determine that such activity does not constitute navigation, then the premise of the Circuit Court's finding of the *nexus* requirement of *Executive Jet* collapses.

In *Foremost Insurance Co. v. Richardson*, 457 U.S. 668 (1982), this Court considered the *nexus* requirement of *Executive Jet* as it related to cases involving pleasure craft. This Court, by a five to four margin, held that the *nexus* requirement was met in cases involving pleasure craft *where the complaint alleges navigational error.* Of course, the Respondents here do not make such allegations. Absent navigation, and the concomitant allegation of obstruction to navigation, also absent, there is nothing upon which to support a finding that the *nexus* requirement has been met here.

CONCLUSION

This tort action, involving claims by North Carolina residents against a North Carolina corporation, is clearly capable of just and efficient adjudication by the courts of that state. The extension of federal admiralty jurisdiction to a land-based tort claim is an unjustified encroachment over interests which are purely local in nature. The Circuit Court has articulated a new rule of admiralty jurisdiction which is destined to create confusion and encourage needless and wasteful litigation by land-based tort claimants seeking the relaxed benefits of admiralty law which, for centuries, has been reserved for seamen. For the reasons stated above, certiorari is necessary to insure that federal admiralty jurisdiction will not be ex-

tended beyond its proper limits as envisaged by the writers of the Constitution.

Respectfully submitted this 1st day of May, 1986.

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